

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

I.T.R. No.13 of 2002
Date of decision: 13.12.2006

The Commissioner of Income-tax (Central), Ludhiana.

-----Applicant

Vs.

M/s Rockman Cycle Ind. (P) Ltd., Ludhiana.

-----Respondent

**CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE RAJESH BINDAL**

Present: Mr. S.K. Garg Narwana, Advocate
for the revenue.

Mr. Akshay Bhan, Advocate
for the assessee.

ORDER:

Following questions of law have been referred for opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench 'A', Chandigarh, arising out of its order dated 31.05.1994 in I.T.A. No.562/Chandi/1989 in respect of assessment year 1984-85:-

- “1. Whether on the facts and in the circumstances of the case, the I.T.A.T. was right in law in holding that the order dated 30.3.1987 passed by the Assessing Officer under section 143 (3) was not erroneous so as to attract action under section 263 of the Income-tax Act by the CIT (Central)?
2. Whether on the facts and in the circumstances of the case, the ITAT was right in law in cancelling the order of the CIT(E) passed under section 263 of the Income-tax Act?”

We have heard learned counsel for the parties and perused the record.

The order of the Commissioner, setting aside the order of assessment and directing the Assessing Officer to re-adjudicate upon the issues and recompute the income of the assessee, was passed for the following reasons:-

- “i That while framing the Assessment, the then Income tax Officer omitted to examine the aspect with regard to the Assessee’s claim for interest and to make a disallowances provided u/s 40A(8) of the Income-tax Act.
- ii. That while framing the Assessment, the then Income-tax Officer overlooked the provisions, of section 80VVA which provide that incentive to be allowed could not exceed 70% of the pre-incentive income and accordingly omitted to make a disallowance as per the provisions of this section.
- iii) Similarly, while dealing with the Assessee’s case, the then Income-tax Officer while making the disallowance as per the provisions of Section 37(3A) omitted to account for the conveyance allowance and salary paid to driver thereby resulting in the incorrect working of the disallowance under the said section.
- iv) That while working out the depreciation, the then Income-tax Officer allowed the extra shift allowance for full year even on the additions made at the fag end of the previous year which resulted in excess extra shift allowance.
- v) That in respect of the capital expenditure incurred on the construction of cabins, the then Income-tax Officer allowed 100% depreciation which is against the provisions of law/rules.
- vi) Similarly, while framing the Assessment, the then Income-tax Officer allowed Investment Allowance and Additional Depreciation on electric installations which is also contrary to the relevant rules.
- vii) That while working out the disallowance as per the provisions of Rule 6D, payment of Rs. 3106/- to the Directors and employees was not taken into account by the then Income-tax Officer.
- viii) Similarly, the then Income-tax Officer omitted to take note of the fact that as a result of the manufacturing activities of the Assessee a lot of scrap is there, yet no efforts were made by him to ascertain the extent of scrap derived during the course

of manufacturing activities and its sales or availability in the closing stock as at the end of the year.”

On appeal by the assessee to the Tribunal, the Tribunal held as under:-

“18. In the result, the order of the CIT is found to be not sustainable in law within the meaning of section 263 of the Act. Therefore, the order is cancelled and that of the ITO is restored. The appeal stands allowed.”

The Tribunal examined all the reasons one by one and found them erroneous.

As regards reason No.(i), it was held that the amount on which interest was claimed, were not deposits, but only outstanding balance of the partners which could not be subjected to disallowance under Section 40A(8) of the Act. It was also held that the issue was covered in favour of the assessee by the order of the Tribunal for the previous assessment year.

As regards reason No.(ii), proceedings under Section 154 of the Act had already been initiated by the Assessing Officer

As regards reason No.(iii), the amount involved was Rs.722/- only.

As regards reason No.(iv), The Assessing Officer had taken a decision based on a CBDT circular dated 26.2.1985.

Reason No.(v) related to depreciation allowed on temporary wooden cabins, of which, cost was Rs. 7345/- only.

Reason No.(vi) related to investment allowance and additional depreciation on electric installations, which were part of plant and machinery.

Reason No.(vii) related to payment made to the Director and employees for traveling expenditure and the amount involved was Rs.3106/-, out of which, the Assessing Officer disallowed Rs.2236/- in proceeding under Section 154 of the Act.

Reason No.(viii) related to scrap derived by the assessee, which was held to be irrelevant.

All the reasons were found not to be sustainable in law under Section 263 of the Act.

Scope of jurisdiction under Section 263 of the Act is well settled. The statutory provision itself requires that such jurisdiction can be exercised only if the order passed by the Assessing Officer is erroneous and prejudicial to the interest of the revenue. In the present case, it could not be held that the order of the Assessing Officer was erroneous or prejudicial to the interest of the revenue. The Tribunal is, thus, justified in holding that the order passed by CIT(C) was not called for.

The questions referred are thus answered against the revenue and in favour of the assessee.

The reference is disposed of.

**(ADARSH KUMAR GOEL)
JUDGE**

December 13, 2006
ashwani

**(RAJESH BINDAL)
JUDGE**